In the Supreme Court of the United States

OCTOBER TERM, 1965

No. 780

JAMES LAWRENCE RELEFORD, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the court of appeals (Pet. App. A) is reported at 352 F. 2d 36.

JURISDICTION

The judgment of the court of appeals was entered on November 2, 1965. The petition for a writ of certiorari was filed on November 27, 1965. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether the instructions to the jury were erroneous.

797-823—65

STATEMENT

After a trial by jury in the United States District Court for the Eastern District of Tennessee, petitioner was convicted of passing three counterfeit $50 bills in separate transactions on July 2, 1962, in violation of 18 U.S.C. 472.[1] He was sentenced to concurrent terms of imprisonment of eight years for two of the offenses and to five years' probation for the remaining offense. On appeal, the conviction was affirmed.

The evidence shows that petitioner was positively identified by witnesses as the man who on July 2, 1962 gave a $50 counterfeit bill (receiving change in return) to the cashier of an automobile company in payment of a $15 repair service to a Cadillac (R. 33a–43a). Petitioner was also positively identified as the man who on the same day gave a $50 counterfeit bill to a food market operator in payment for a purchase of meat. A few days later when the market owner located petitioner to complain of the bogus bill (after the Secret Service had entered the case), petitioner returned the full amount tendered to the owner with the explanation that he had received the counterfeit bill in a business transaction. He never requested the return of the counterfeit bill (R. 46a–50a). In addition the wife of a supermarket owner testified that petitioner "certainly looks like" the man who gave her a $50 counterfeit bill (also on July 2)

[1] Two co-defendants charged in other counts of the indictment with passing some 14 of the counterfeit $50 bills on the same day entered pleas of guilty prior to trial.

At petitioner's trial the jury was unable to agree as to a conspiracy count charged (R. 154a).

in exchange for an item costing less than a dollar (R. 59a–65a).

There was also testimony that petitioner had voluntarily admitted to federal agents, after having been fully advised of his rights (including the right to counsel) that he had passed three of the counterfeit bills although he denied knowing that they were counterfeit. He said that he had received the bills in return for four cases of liquor delivered to an alleged acquaintance whom officers, after investigation, were unable to identify or locate (R. 65a–83a).

ARGUMENT

Petitioner's contentions relate to the trial court's instructions which were upheld, after careful consideration, by the court below. There is no occasion for further review.

1. The trial court's charge with respect to the question of guilty knowledge, set out in some detail in the opinion of the court below, disposes of petitioner's contention that his conviction must be reversed because the court refused to specifically instruct that "you cannot infer that the defendant knew that the bills were counterfeit, solely from the fact that he passed them, if you find that he did pass them".[2] The charge given informed the jury that knowledge by petitioner of the counterfeit character of any notes he may have passed was an essential element of the crime; that it could convict only upon proof of such

[2] With respect to this requested instruction, the record shows that the district judge considered it as "Modified and Charged" in combination with a request bearing on knowledge of the counterfeit character of the bills (R. 159a).

knowledge and other essential elements convincing it of guilt beyond a reasonable doubt; and that the government had the burden of proving beyond a reasonable doubt that petitioner knew the notes were not genuine (see R. 132a–135a). The jury was also told that an essential element was intent to defraud (R. 133a, 135a). It was also admonished that it had to find specific intent—the knowing performance of a forbidden act intending with evil motive or bad purpose to disobey or disregard the law (R. 119a–120a). The jury could not have failed to understand that proof of the passing of the bills alone would not permit conviction.

2. In view of the detailed instructions on intent, there is no merit to the claim of error in the instruction that "unless the contrary appears * * * from the evidence" the jury could draw an inference that petitioner intended the natural and probable consequences of his acts "which one standing in like circumstances and possessing like knowledge should reasonably have expected to result * * *" (R. 121a). See *United States* v. *Denton*, 336 F. 2d 785 (C.A. 6); *Sherwin* v. *United States*, 320 F. 2d 137 (C.A. 9), certiorari denied, 375 U.S. 964. In *Mann* v. *United States*, 319 F. 2d 404 (C.A. 5), certiorari denied, 375 U.S. 986, the Fifth Circuit held that, on the facts of the income tax evasion case there involved, the "overall effect" of the instruction was "to place a burden upon the defendant to produce evidence to overcome a presumption of guilt" (319 F. 2d at 410). This Court has had opportunity in the past to resolve the supposed conflict (see *Sherwin* v. *United States*, *supra*); and

the Fifth Circuit has more recently held that in a different factual context the same instruction did not constitute plain error (*Helms* v. *United States*, 340 F. 2d 15).

3. The court's statement that "proof beyond a reasonable doubt is established if the evidence is such as you would be willing to rely and act on in the most important of your own affairs"—is but a part of a charge giving long approved definitions of reasonable doubt[3] (see R. 110a–111a). In *Holland* v. *United States*, 348 U.S. 121, this Court, considering similar language, suggested that the instruction should have been in terms of the kind of doubt that would make a person hesitant to act rather than willing to act, but concluded that the charge as given would not mislead the jury into finding no reasonable doubt when in fact there was some. As in that case, the instructions here, viewed as a whole, correctly conveyed the concept of reasonable doubt.

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[3] This part of the charge was followed, *inter alia*, by a statement that "A reasonable doubt does exist when, after a careful and impartial consideration of all the evidence, you do not feel convinced to a moral certainty that a defendant is guilty of the charge."

CONCLUSION

It is respectfully submitted that the petition for a writ of certiorari should be denied.

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